

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

CELESTE SPICER, AUTUMN BURGESS, AMY LEDIN,	:	x
JOSEPH RUSSO, ESTHER MARTINEZ, LYSETTE	:	
ROMAN, and SERENA SIYING HUI, on behalf of	:	08 Civ. 10240 (PAE)
themselves and others similarly situated,	:	
Plaintiffs,	:	ECF CASE
- v. -	:	DECLARATION OF
	:	LISA H. BEBCHICK
PIER SIXTY, LLC and JAMES KIRSCH,	:	
Defendants.	:	
	x	

LISA H. BEBCHICK declares under penalty of perjury pursuant to 28 U.S.C. § 1746 as follows:

1. I am a partner of the law firm of Fried, Frank, Harris, Shriver & Jacobson LLP and co-counsel to Defendants Pier Sixty, LLC (“Pier Sixty”) and James Kirsch in the above-captioned litigation.
2. I respectfully submit this Declaration in support of Defendants’ Motion for Partial Summary Judgment on Plaintiffs’ Claim for Liquidated Damages under New York Labor Law § 198(1-a).
3. This action was initiated by the filing of the Complaint, dated November 25, 2008 (Docket No. 1). Defendants filed an Answer to the Complaint, dated January 28, 2009 (Docket No. 4). Plaintiffs subsequently filed a First Amended Complaint, dated September 25, 2009 (Docket No. 51-2, Ex. H). Defendants filed an Answer to the First Amended Complaint, dated October 6, 2009 (Docket No. 17). Plaintiffs filed a Second Amended Complaint, dated February 8, 2011 (Docket No. 214). Defendants filed an Answer to the Second Amended Complaint, dated March 14, 2011 (Docket No. 217).

4. Attached as **Exhibit 1** is a true and correct copy of the Second Amended Complaint (Docket No. 214), dated February 8, 2011.

5. Attached as **Exhibit 2** is a true and correct copy of the Answer to the Second Amended Complaint (Docket No. 217), dated March 14, 2011.

6. Attached as **Exhibit 3** is a true and correct copy of the Memorandum & Order on Plaintiffs' motion for class/collective action certification and Defendants' motion for summary judgment (Docket No. 56), dated July 27, 2010.

7. Attached as **Exhibit 4** is a true and correct copy of the Memorandum & Order on Plaintiffs' motion for leave to amend their First Amended Complaint (Docket No. 213), dated February 7, 2011.

8. Attached as **Exhibit 5** is a true and correct copy of relevant excerpts from the transcript of the deposition of James Kirsch, dated November 24, 2009.

9. Attached as **Exhibit 6** is a true and correct copy of the transcript of the deposition of James Kirsch, dated March 30, 2011.

10. Attached as **Exhibit 7** is a true and correct copy of the Affidavit of Douglas Giordano, dated March 3, 2010, excluding exhibits.

11. Attached as **Exhibit 8** is a true and correct copy of a printout from the website of Jackson Lewis LLP (available at http://www.jacksonlewis.com/the_firm.php), which lists an overview of its labor and employment practice areas.

12. Attached as **Exhibit 9** is a true and correct copy of the "2011 Am Law 100" list, published by THE AMERICAN LAWYER on May 1, 2011.

13. Attached as **Exhibit 10** is a true and correct copy of the transcript of the deposition of Luisa Marciano, dated May 6, 2011.

14. Attached as **Exhibit 11** is a true and correct copy of relevant excerpts from the transcript of the deposition of Judith Paulen, dated February 24, 2010.

15. Attached as **Exhibit 12** is a true and correct copy of relevant excerpts from the transcript of the deposition of Jennifer Kunin, dated December 14, 2009.

16. Attached as **Exhibit 13** is a true and correct copy of relevant excerpts from the transcript of the deposition of Amy Margolis, dated February 4, 2010.

17. Attached as **Exhibit 14** is a true and correct copy of the Affidavit of Amy Margolis, dated August 10, 2009, bearing Bates numbers PSL 10627-10628.

18. Attached as **Exhibit 15** is a true and correct copy of the Declaration of Jennifer Kunin, dated August 10, 2009, bearing Bates numbers PSL 10624-10626.

19. Attached as **Exhibit 16** is a true and correct copy of the Declaration of Robert O. Sanders, Jr., dated July 31, 2009, bearing Bates numbers PSL 10631-10634.

20. Attached as **Exhibit 17** is a true and correct copy of the Declaration of Douglas Giordano, dated January 17, 2011, excluding exhibit.

21. Attached as **Exhibit 18** is a true and correct copy of relevant excerpts from the transcript of the deposition of Plaintiff Celeste Spicer, dated August 12, 2009.

22. Attached as **Exhibit 19** is a true and correct copy of relevant excerpts from the transcript of the deposition of Plaintiff Joseph Russo, Jr., dated August 6, 2009.

23. Attached as **Exhibit 20** is a true and correct copy of relevant excerpts from the transcript of the deposition of Plaintiff Autumn Burgess, dated November 11, 2009.

24. Attached as **Exhibit 21** is a true and correct copy of a memorandum from Richard J. Polsinello, Director, Division of Labor Standards of the New York Department of Labor (“NYDOL”) to “ALL SUPERVISORS,” dated June 1, 1995 regarding “Regulatory Reform –

Banquets, Section 196-d” (“June 1995 Memo”), bearing Bates number PSL 451674.

25. Attached as **Exhibit 22** are true and correct copies of a copy of a letter from William M. Otter, Administrator, Employment Standards Administration Wage and Hour Division of the U.S. Department of Labor to an individual whose identity is redacted, dated February 8, 1985 regarding “compulsory service charges,” bearing Bates numbers, PSL 451683-451686, PSL 451612-451615, and PSL 451676-451679.

26. Attached as **Exhibit 23** is a true and correct copy of an excerpt from the New York State Tax Reporter ¶ 60-140, “N.Y. – Sales and Use Tax – Persons and Sales, Subject to Tax,” published by CCH, bearing Bates number PSL 451673.

27. Attached as **Exhibit 24** is a true and correct copy of “NYSRA Labor News – Ask the Pros: Tips/Gratuities/Service Charges,” published in Volume 10, Issue 3 of NYSRA NEWS (May/June 2005).

28. Attached as **Exhibit 25** is a true and correct copy of a customer contract that Pier Sixty used (“Form Contract One”), bearing Bates numbers PSL 25679-25687.

29. Attached as **Exhibit 26** is a true and correct copy of a letter from Robert W. Redmond, Senior Attorney, Counsel’s Office of the NYDOL to Stacy L. Gilbert, CPA, dated August 27, 1999, regarding “Distribution of Banquet Gratuities/Labor Law Section 196-d Our File No.: RO-99-0087.”

30. Attached as **Exhibit 27** is a true and correct copy of a letter from Robert Ambaras, Senior Attorney, Counsel’s Office of the NYDOL, to Robert L. Murphy, Esq., dated March 24, 2000, regarding “Request for Opinion Labor Law Section 196-d Mandatory Service Charges.”

31. Attached as **Exhibit 28** is a true and correct copy of a letter from Robert

Ambaras, Associate Attorney, Counsel's Office of the NYDOL, to Russell E. Adler, Esq., dated March 12, 2001, regarding "Request for Opinion Labor Law Section 196-d Distribution of Service Charge."

32. Attached as **Exhibit 29** is a true and correct copy of a letter from Sonia Kruppenbacher Meyer, Assistant Attorney II, Counsel's Office of the NYDOL, to William K. Chan, CPA, dated September 25, 2001, regarding "Request for Opinion Our File No. R0-01-0060."

33. Attached as **Exhibit 30** is a true and correct copy of a letter from Jeffrey G. Shapiro, Senior Attorney, Counsel's Office of the NYDOL, to Jeffrey E. Goldman, Esq., dated November 8, 2004, regarding "Request for Opinion RO-04-0058."

34. Attached as **Exhibit 31** is a true and correct copy of a letter from Jeffrey G. Shapiro, Senior Attorney, Counsel's Office of the NYDOL, to Scott A. Lucas, Esq., dated February 22, 2006, regarding "Request for Opinion Banquet Service Charges File Number: RO-06-0009."

35. Attached as **Exhibit 32** is a true and correct copy of a redacted copy of a letter from Jeffrey G. Shapiro, Senior Attorney at the NYDOL, to an individual whose identity is redacted, dated August 2, 2006, regarding "Request for Opinion Banquet Service Charges O'Connor File # RO-05-0053 Bejjani File #s RO-06-0059 RO-06-0067."

36. Attached as **Exhibit 33** is a true and correct copy of a fax from Jeffrey Shapiro, Counsel's Office of the NYDOL, to Carolyn Richmond, Esq., dated October 26, 2007, with enclosures, including the June 1995 Memo.

37. Attached as **Exhibit 34** is a true and correct copy of the Declaration of Douglas H. Flaum, dated August 23, 2010, in support of Defendants' Motion to Certify July 2[7], 2010

Order for Interlocutory Appeal, excluding exhibits.

38. Attached as **Exhibit 35** is a true and correct copy of an email, dated March 4, 2008, from Luisa Marciano to James Kirsch, Douglas Giordano, and John Delahunt, copying Dawn Bergman, bearing Bates numbers PSL 451609-451610.

39. Attached as **Exhibit 36** is a true and correct copy of an email from Richard Landau of Jackson Lewis, forwarded by Luisa Marciano to Douglas Giordano and Dawn Bergman, dated February 20, 2008, bearing Bates numbers PSL 451595-451601.

40. Attached as **Exhibit 37** is a true and correct copy of a customer contract that Pier Sixty used (“Form Contract Two”), bearing Bates numbers PSL 22758-22768.

41. Attached as **Exhibit 38** are true and correct copies of emails between Pier Sixty’s sales managers and customers, bearing Bates numbers PSL 4360-4362, PSL 4671-4672, PSL 5159-5165, PSL 5278-5279, PSL 5358-5359, and PSL 5538-5541.

42. Attached as **Exhibit 39** are true and correct copies of emails between Pier Sixty’s sales managers and customers, bearing Bates numbers PSL 4858-4859, PSL 4873-4874, PSL 5194-5199, PSL 5208-5210, PSL 5631-5636, PSL 6047-6049, PSL 6611-6612, PSL 7281-7282, PSL 7417, PSL 7453-7457, PSL 7632, and PSL 8348.

43. Attached as **Exhibit 40** is a true and correct copy of a customer contract that Pier Sixty used (“Form Contract Three”), dated March 9, 2009, bearing Bates numbers PSL 26997-27006.

44. Attached as **Exhibit 41** are true and correct copies of pages from the website of Fox Rothschild (available at <http://www.foxrothschild.com/practiceareas/default.aspx?id=152> and <http://www.foxrothschild.com/practiceareas/hospitality/default.aspx?id=1556>), which list the practice areas of Fox Rothschild and provide an overview of its Hospitality practice group.

45. Attached as **Exhibit 42** is a true and correct copy of an article by Isabel Vincent and Melissa Klein, entitled "Money-Grub 'tip' suits driving eateries out of business," published in THE N.Y. POST on September 26, 2011 (available at http://www.nypost.com/p/news/local/the_lawyer_who_ate_new_york_SO9DZBVJ4hxnr7jY8rDb2J).

46. Attached as **Exhibit 43** is a true and correct copy of a letter from Robert Ambaras, Senior Attorney, Counsel's Office of the NYDOL, to Edith Lutnick, Esq., dated March 26, 1999, regarding "Request for Opinion Labor Law Section 196-d Banquet Gratuities."

47. Attached as **Exhibit 44** is a true and correct copy of the Declaration of Seth M. Kaplan, dated January 17, 2011, in support of Defendants' Opposition to Plaintiffs' Motion to Amend, and Exhibits D and E thereto, excluding all other exhibits.

48. Attached as **Exhibit 45** are true and correct copies of emails between Pier Sixty's sales managers and customers, bearing Bates numbers PSL 4570-4571, PSL 9575-9580, and PSL 10351-10352.

49. I declare under penalty of perjury that the foregoing is true and correct.

Dated: New York, New York
November 9, 2011



Lisa H. Bebchick
lisa.bebchick@friedfrank.com